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OFFICE OF PETITIONS

In re Application of :
Kenneth Scott Kump :
Application No.: 09/344,190 : DECISION ON
Filing or 371(c) Date: 06/24/1999 : PETITION
Attorney Docket Number: 15-XZ-4971 :

This is a decision in response to the Petition to Withdraw Holding of Abandonment Under 37 CFR 1.181, filed July 27, 2006.

This Petition is hereby dismissed.

Any further petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under [insert the applicable code section]." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the Notice of Non-Compliant Amendment ("Notice"), mailed May 26, 2004. The Notice set a one (1) month period for reply. Extensions of time were available under 37 CFR 1.136(a). No reply having been received, the application became abandoned on June 27, 2004. A Notice of Abandonment was mailed July 3, 2006.

Petition under 37 CFR 1.181

Applicant files the instant petition and asserts that a timely reply to the Office action was filed via facsimile on June 4, 2004. In support of this assertion, Applicant provides a copy of a Fax Cover Letter and "Amendments to the Claims". The Fax Cover Letter indicates that the transmission was sent to 703-746-5934. The "Amendments to the Claims" do not contain any indication therein as to when it was sent to this Office.

Applicant requests that the application be placed in condition for allowance with the associated PTA.

Applicable Law, Rules and MPEP

The MPEP 502(I)(A) mandates that

[e]ffective December 1, 2003, all patent application related correspondence transmitted by facsimile must be directed to the central facsimile number, with a few exceptions below. The central facsimile number is (571) 273-8300. Replies to Office actions including after-final amendments that are transmitted by facsimile must be directed to the central facsimile number. Unofficial correspondence such as draft proposed amendments for interviews may continue to be transmitted by facsimile to the Technology Centers (TCs). Office personnel should not use their personal facsimile numbers for official application related correspondence. Office personnel that inadvertently receive official application related correspondence on a personal facsimile number must either route (do not forward) the correspondence to the official central facsimile number or they may, with applicant's (or applicant's representative) permission, make the facsimile amendment part of an examiner's amendment. (Emphasis supplied).

MPEP 502(I)(A)

Analysis and conclusion

Applicant has failed to demonstrate that a complete and proper reply to the Notice was properly filed in this Office. Applicant transmitted the reply to 703-746-5934. As provided in the MPEP, facsimile replies to Office actions must be sent to 571-273-8300. Accordingly, the petition is dismissed.

Alternative venue

Applicant is strongly urged to file a petition stating that the delay was unintentional. An “unintentional” petition under 37 CFR 1.137(b) must be accompanied by the required fee, currently \$750.00.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.


Derek L. Woods
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Office of Petitions